



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams,
Agency Secretary

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Arnold Schwarzenegger
Governor

Meeting Minutes

Los Angeles Regional Water Quality Control Board
June 5, 2009 Board Meeting
Conference Room, Seventh Floor
320 W. 4th Street,
Los Angeles, California

The meeting was called to order by Chair Mary Ann Lutz at 9:25 a.m.

Pledge of Allegiance.

Item 1. Roll Call

Board Members Present: Chair Mary Ann Lutz, Vice Chair Madelyn Glickfeld, Steve Blois, Fran Diamond, and Maria Mehranian.

Board Members Absent: Dick Richardson, and Maribel Marin.

Staff Present: Tracy Egoscue, Deborah Smith, Ronji Harris, Jack Price, Michael Levy, Stephen Cain, Samuel Unger, Paula Rasmussen, Wendy Phillips, Rebecca Chou, Jeff Ogata, Jennifer Fordyce, Hugh Marley, Mercedes Merino, Dionisia Rodriguez, Toni Callaway, Elizabeth Erickson, Ejigu Solomon, Russ Colby

Individuals whose Names Appear on the Sign-In Sheet

Dr. Mark Gold, Heal the Bay	Mr. Jim Thorsen, City of Malibu
Ms. Becky Christensen, Resident Paradise Cove	Ms. Nicole McGirley, Resident Paradise Cove
Mr. Craig George, City of Malibu	Ms. W. Susie Santilena, Heal the Bay
Ms. Kirsten James, Heal the Bay	

Item 2. Public Forum.

- *Dr. Mark Gold, Heal the Bay gave an apology to the Board for the Ex Parte during the May 8, 2009 Board meeting during the Boeing Santa Susana hearing's deliberation. He stated that he apologized for putting the Board in a difficult situation.*

Item 3. Order of Agenda.

- *Senior Staff Counsel Michael Levy made a statement that he was providing Mr. Hankell, Attorney for Paradise Cove, all communication pertinent to the matter at hand. In addition, Mr. Levy discussed the Order of proceedings for the day.*

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Item 4. Board Member Communications.

There was no communication reported this matter.

The Clerk read an Opening Statement and the Chair rendered an Oath.

Item 5. Hearing on Complaint No. R4-2009-0017 for Administrative Civil Liability to assess penalties against The Kissel Company, Inc. (Paradise Cove Mobile Home Park) for violation of requirements contained in Order No. R4-2002-0108 amended Time Schedule Order (Amended TSO) No. R4-2006-0079 and Cleanup and Abatement Order (CAO) No. R4-2007-0043 in the amount of \$1,652,500.

Opening Arguments for Staff. Ms. Jennifer Fordyce, Staff Counsel.

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Opening Arguments for Kissel Company, Inc. (Paradise Cove Mobile Home Park). Mr. Garrett L. Hanken, Esq. (*Mr. Hanken made but was not limited to the following points in his Opening Arguments.*)

- The Kissel Company built the wastewater treatment plant as quickly as possible
- Indicated that Kissel promptly reported discharges
- Believes that Kissel is being used to set an example

Public Comment.

- Dr. Mark Gold, Heal the Bay
- Ms. Julie Villa Blanca, Resident at Paradise Cove
- Mr. Dusty Peak, Pointe Dume resident
- Ms. Regan Schaar, Malibu resident
- Ms. Pamela Ulich, Malibu resident
- Ms. Nicole McGinley, Malibu resident
- Ms. Ruby Dume, Malibu resident
- Ms. Kelly Myer, Malibu resident
- Ms. Susie Santilena, Representing Ted Miller- Malibu resident
- Mr. Frans Bigelow, Malibu resident
- Ms. Becky Christensen, Malibu resident
- Ms. Kirsten James, (Heal the Bay) Representing Mr. Brian O'Malley

Presentation by Staff. (*Ms. Mercedes Merino gave a presentation making, but was not limited to the following points.*)

- Discharges untreated wastewater
- Discharged partial untreated raw sewage at the plant
- Has 257 mobile homes parks within 1500 feet of the Pacific Ocean
- The park operates onsite treatment plant
- The permit contains several prohibitions
- Went into detail about the violations that occurred in 2007

- The permittee filed a petition with State Board to be held in Abeyance
- To this day the petition remains in Abeyance

Ms. Toni Callaway, Regional Board Staff and previous Project Manager for the Paradise Cove site.

- Discussed the April 30, 2007 and May 1, 2007 spills at Paradise Cove
- There were 200 gallons discharged in these spills
- It is estimated that the July 2007 spill was at least 150 gallons

Ms. Elizabeth Erickson, Current Project Manager for Paradise Cove

- History of spills since September 10, 2007 500 gallons
- September 13, 2007 another spill was reported, that saturated the storage area
- September 18, 2007 sewage backed up into the streets
- September 21, & 22, 2007 spills, the manholes flooded out, and charcoal pellets surrounded the manholes

Ms. Mercedes and Ms. Erickson discussed other spill occurrences through April 2008. She then began discussing the Amended Time Schedule Order (TSO).

- Discussed the violations of the Amended TSO
- She was informed that the permanent oxygen tank not installed
- July 10, 2007 informed that pipes and connections were not installed, and connections not made
- From November 1, 2006 – August 12, 2007, there were 284 days of violations
- As of today, the permittee has not complied with construction
- Kissel has failed to achieve full compliance with Waste Discharge Requirements (WDRs) by February 1, 2007
- There were 642 days of violation of bacteria limits (February 1, 2007 – November 5, 2008)
- The permittee has a history of failing to comply
- There is a long history of sewage overflows
- The potential maximum penalty is \$5,970,000, but staff is recommending a penalty of \$1,688,275 which will include staff costs

Prosecution Team Case-in Chief

- Talked about the history of Paradise Cove
- Infrastructure currently is different than when it was built
- This Kissel Company is highly regulated by CA DHS, The Regional Board, and Native American Cultural Resources
- Malibu became an incorporated City on March 28, 1991, prior to incorporation, Los Angeles County had oversight over the zoning
- Discussion on rent control ordinances which included onerous provisions that severely impacted Kissel
- Believe that human error contributed to some of the problems at Paradise Cove for the July 2007 spill
- For every month after August 1, 2005 that it took Kissel to complete the Waste Water Treatment Plant (WWTP), it costs Kissel about \$25,000 in lost rent
- Prior to 2002, the Kissel Company did not have Waste Discharge Requirements, therefore it had no violations
- Incorporation was a fight against sewers and Malibu remains unsewered

- The residents of Malibu sought incorporation, because they feared that a sewerred Malibu would lead to unbridled development
- Prior to July 6, 2006, Kissel was not in a position to commence construction for the WWTP
- Broken utility lines, and rain caused delays for construction on WWTP
- Kissel has incurred \$5.7 million total costs in connection with the WWTP
- Stated that Kissel is being singled out because other entities in Malibu have ignored that Board and have not submitted reports

There was Cross-Examination by both teams. Then there were rebuttals. After which both parties made closing statements.

The Kissel Company Closing Statements. Mr. Garrett L. Hanken, Esq.

- Water Code Section 13350(a) does not constitute that a discharge has taken place, therefore violation is not justifiable
- Believe that the reported violations fall into the Statute of Limitations
- If a penalty is imposed, it should be nominal ant not maximum
- Do not believe that this is a violation of any gravity
- There aren't long term effects of any kind
- The water was treated for bacteria, but bacteria is solid and would be filtered out by soil
- Many of the problems had third party contributors
- Nature of the violations was due to a failure to do the impossible

Break at 6:50 pm, reconvened at 7:10 pm

Prosecution Closing Statements. Ms. Jennifer Fordyce, Staff Counsel.

- The Board adopted 3 Orders and Kissel Company violated every one of them
- Those discharges reached Ramirez Creek which is in waters of the State
- Kissel admitted to 14 spills, and all were in violation of Orders admittedly in emails or letters
- Kissel underestimated some of the degree of their spills
- The Kissel violations violated 13361

There was time allotted for questions from Regional Board or Board Counsel. Executive Officer Tracy Egoscue and Senior Counsel Michael Levy questioned Kissel, Regional Board Staff, subpoenaed witnesses.

There was a break at taken 8:20pm., reconvened at 8:35.

Board questions, comments, concerns, and discussion:

- In expert opinion, is the WWTP sophisticated enough to handle what is going on at the facility?
- Asked a subpoenaed witness if she was present when photos of a spill at the facility were taken?
- Asked staff if they still hold that there were 17 violations at the site?
- When the permittee failed to meet the November 2002 deadlines, how many extensions were given?
- Has the City of Malibu ever been asked to use a monito0ring system?

Closed Session break at 10:30 pm. The Board met in Closed Session to deliberate pursuant to Government Code section 11123(c) (3). The Board reconvened at 11:50 pm.

Senior Staff Counsel Michael Levy read the results of the deliberation into the record as follows:

- The authenticity of the photographs were received into the record
- Sewage Discharge Violations: The Kissel Company violated Waste Discharge Requirements on three occasions by discharging sewage and partially treated sewage from Paradise Cove's treatment collection system on April 30, 2007, May 1, 2007, and July 20, 2007, in violation of, among other provisions of the WDRs of General Provision to Ramirez Creek, liability not to exceed \$5,000 for each day of violation for combined maximum potential penalty of \$15,000
- Reporting Violations: The Kissel Company violated the Monitoring and Reporting Program (No. CI-8342), which is incorporated into the WDRs at page 9, Provision E.10, by failing to file monitoring reports for MW-4 for seven constituents each on two occasions., pursuant to Water Code section 13268, liability for which may be imposed to an amount not to exceed \$1,000 for each penalty is appropriate under Water Code section 13350, the maximum penalty would be \$70,000, which represents a possible \$5,000 per day of violation.
- Violations of Cleanup and Abatement Order No. R4-2007-0043: The Kissel Company violated the CAO by discharging untreated and partially treated sewage on 12 occasions, including those described in Attachment B, hereto, except the alleged violations on September 21, and September 22, 2007 for which the Board finds lacks adequate evidence.
- The Parties are directed to file an additional brief, not to exceed 10 pages per side, addressing the following issues: a) Whether Water Code section 13350(a) (2) liability requires that the violation of the relevant order result from a discharge of waste to waters of the state; and b) Whether and under what circumstances the ACLC may be amended to conform to proof, so it alleges the reporting violations pursuant to Water Code section 13268 instead of 13350.
- The briefs described shall be filed not later than 90 days of today. This matter will be continued until the first regularly scheduled Board meeting after December 1, 2009.

Counsel asked the Clerk to poll the Board for voice votes to confirm their approval of these Orders. All of the Board members voted "Yes".

The Chair stated that there will be a recess on this matter until the first meeting after December 1, 2009 for this matter.

The meeting recessed, and will reconvene at the first Board meeting in December 2009. The Draft Minutes may be adopted July 16, 2009 Board meeting.

Written and submitted by: _____, then finalized on July 17, 2009.

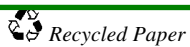
Ronji R. Harris

California Environmental Protection Agency



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